

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

HEATHER SMITH, individually and on  
behalf of all others similarly situated,

*Plaintiff,*

v.

WHALECO INC. d/b/a TEMU,

*Defendant.*

Case No. 5:23-CV-00559-D

**DEFENDANT’S MOTION TO COMPEL ARBITRATION**

Defendant Whaleco Inc. d/b/a Temu (“Temu”), through its undersigned counsel, hereby respectfully moves, pursuant to the Federal Arbitration Act (“FAA”) and the Court’s order of November 8, 2023 granting leave (*see* Dkt. 32), to compel Plaintiff Heather Smith (“Plaintiff”) to submit her claims against Temu to binding individual arbitration, and to dismiss (or alternatively stay) this matter in favor of said arbitration.

As is described more fully in Temu’s Brief, which is filed herewith and incorporated herein by reference, Plaintiff sues Temu under the Oklahoma Telephone Solicitation Act (*i.e.*, Okla. Stat. tit. 15, § 775C *et seq.*, the “OTSA”) based on “telephonic sales calls” (*i.e.*, text messages) she allegedly received from or on behalf of Temu on her cellphone without her consent, and seeks class treatment. However, when she signed up for a Temu account, and when she subsequently logged on to her account, she not only consented to receiving such texts but also agreed to Temu’s “Terms of Use” containing a mandatory binding individual arbitration provision and separate class action waiver, requiring her to arbitrate her OTSA claims strictly on an individual basis. Further, while this Court may stay this action under the

FAA in favor of said arbitration, it may also dismiss the entire case in accordance with Tenth Circuit precedent, as all of Plaintiff's claims are subject to arbitration.

WHEREFORE, for the reasons stated above and in the accompanying Brief, and for such other reasons as may be presented to the Court prior to its ruling hereon, Temu respectfully requests that the Court enter an order compelling Plaintiff to submit her claims in this matter to binding individual arbitration as she agreed, and dismissing (or alternatively staying) this matter in favor of said arbitration, along with granting Temu all other relief the Court deems just and proper.

Dated: November 15, 2023

Respectfully submitted by:

SMITH GAMBRELL & RUSSELL LLP

/s/ Robert A. Stines

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*Attorneys for Defendant*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 15, 2023, a true and correct copy of the foregoing was electronically filed with the Court's CM/ECF system, which will send a notice to all counsel of record.

/s/ Robert A. Stines

Robert A. Stines